

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

MARY ANN MICHAEL,

Plaintiff,

V.

JO ANNE B. BARNHART,
Commissioner of Social Security,

Defendant.

CIVIL ACTION NO. 3:CV-04-1394
(JUDGE KOSIK)

MEMORANDUM AND ORDER

AND NOW, THIS 20th DAY OF APRIL, 2005, IT APPEARING TO THE
COURT THAT:

[1] On June 29, 2004, plaintiff filed the above-captioned action pursuant to 42 U.S.C. §§ 405(g) and 1383(c)(3), seeking review of defendant's decision to deny plaintiff's claim for Social Security Disability Insurance Benefits and Supplemental Security Income;

[2] the matter was assigned to United States Magistrate Judge Malachy E. Mannion;

[3] by a Report and Recommendation dated April 1, 2005, the Magistrate Judge recommended that plaintiff's appeal be remanded to the Commissioner for further consideration of all of the relevant evidence consistent with his Report; and,

[4] the defendant filed a letter on April 18, 2005 stating that she waived the opportunity to respond to the Magistrate Judge's Report and Recommendation.

IT FURTHER APPEARING THAT:

[5] If no objections are filed to a Magistrate Judge's Report and

Recommendation, the Court need not conduct a *de novo* review of plaintiff's claims. 28 U.S.C. § 636(b)(1)(C); *Thomas v. Arn*, 474 U.S. 140, 150-53, 106 S.Ct. 466 (1985). Nonetheless, the usual practice of the district court is to give "reasoned consideration" to a magistrate judge's report prior to adopting it. *Henderson v. Carlson*, 812 F.2d 874, 878 (3rd Cir. 1987);

[6] having examined the Magistrate Judge's Report and Recommendation, we agree that the ALJ failed to discuss plaintiff's treating physician, Dr. Janerich's opinion that plaintiff should not work due to diabetes and low back pain. Moreover, we agree that the ALJ should have noted why certain pieces of medical evidence were more deserving of weight than others. Finally, we agree with the Magistrate Judge that if it is determined that Dr. Janerich's opinion is deserving of more weight, the ALJ's assessment of plaintiff's credibility and the sufficiency of the hypothetical question posed to the vocational expert during his testimony may be affected.

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

[1] the Report and Recommendation of Magistrate Judge Malachy E. Mannion dated April 1, 2005 (Doc. 7) is **adopted**; and,

[2] the Clerk of Court is directed to **remand** the above-captioned action to the Commissioner for further proceedings consistent with the Report and Recommendation of the Magistrate Judge.

s/Edwin M. Kosik
United States District Judge